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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/955,662	09/19/2001	Edward G. Tiedemann JR.	PA792C1	1407
23696	7590	02/27/2006	EXAMINER	
QUALCOMM, INC			NGUYEN, STEVEN H D	
5775 MOREHOUSE DR.				
SAN DIEGO, CA 92121			ART UNIT	PAPER NUMBER
			2665	

DATE MAILED: 02/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/955,662	TIEDEMANN ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Steven HD Nguyen	2665

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 06 December 2005.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 1-17 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1-17 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date .

4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. .  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: .

## DETAILED ACTION

### *Double Patenting*

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-17 rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-16 of U.S. Patent No. 6317435 in view of Kato (USP 6707806).

Regarding claims 1-17, the claims 1-16 of patent disclose all the limitation of claims such as identifying the available bandwidth in the frame and inserting the un-scheduled stream into the frame that includes a scheduled stream for simultaneously transmitting on the forward link. However, the patent ‘435 fails to disclose the unscheduled stream is transmitted with full power. In the same field of endeavor, Kato discloses a method for multiplexing a plurality of type of data into a frame wherein the transmission power of the data types is controlled by transmission power controller. higher quality required high power (See col. 1, lines 50-67).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to apply a method and system for controlling transmission power of the data types within a frame as disclosed by Kato into the patent '435. The motivation would have been to prevent interference with other signals that uses the same frequency band.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-3, 10-12 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hoff (USP 5463626) in view of Kato (USP 6707806).

Regarding claims 1-3 and 15, Sugaya discloses a method for transmitting information from a base station (Fig 1, ref 10, 18, 20 and 12) to mobile stations (Fig 1, Ref 14 and 22) in a communication system comprising the steps of identifying at least one portion of a time frame within the forward link, the identified portion of the frame having available capacity for transmitting at least a portion of at least one previously unscheduled traffic stream in addition to any traffic streams previously scheduled to be transmitted over the forward link (Col. 3, lines 22-25 discloses identified the available space slots in the forward link and interleaving facsimile message into these available spaces after the portion space slots of forward link assigned to the page messages); and simultaneously transmitting the previously scheduled traffic streams and the portion of the previously unscheduled traffic stream during the identified portion of the frame

(Col 3, lines 22-35 for transmitting the frames wherein each frame divided into the space slots that contain the page message “scheduled traffic stream” and facsimile message “unscheduled traffic stream” to the mobiles). However, Hoff fails to disclose a base station for transmitting the previous unscheduled stream at a full transmission power and the transmission power of unscheduled and scheduled streams are not greater than maximum power. In the same field of endeavor, Kato discloses a method and system such CDMA for controlling a transmission power of the data types within a time frame that carries a plurality of data types in order to prevent the total of transmission power of the data types less than a transmission power of the frame (See col. 1, lines 50-67) and the sum is substantially equal to the maximum power ceiling and the sum is maintained at a constant level over a plurality of time frames by repeating the steps of claim 2 (It is implicitly disclosed because the base station transmits the same information, then the sum is at constant level and substantially equal to the transmission power of the frame).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to apply a method and system for controlling transmission power of the data types within a frame as disclosed by Kato into Hoff’s system and method. The motivation would have been to prevent interference with other signals that uses the same frequency band.

Regarding claim 10, Hoff implicitly discloses a traffic stream from the previously unscheduled streams has a different frame length than a traffic stream from the previously scheduled streams (the message and screen data has a different length).

Regarding claim 11, Hoff discloses the traffic stream is transmitted discontinuously (Fig 5, the stream is interleaved into different slots, so it discontinuously transmitted via the frames).

Regarding claim 12, Hoff implicitly discloses the previously unscheduled traffic stream has a lower priority than the previously scheduled traffic streams (page messages and fax message wherein page must has a high priority than the fax message because the fax message is only transmits when the frame has available vacant slot).

*Allowable Subject Matter*

5. Claims 16-17 are allowed.
6. Claims 4-9 and 13-14 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

*Conclusion*

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven HD Nguyen whose telephone number is (571) 272-3159. The examiner can normally be reached on 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wellington Chin can be reached on (571) 272-3134. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Steven HD Nguyen  
Primary Examiner  
Art Unit 2665  
February 10, 2006